

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD DALE DEETER, JR.,
DONALD B. PEARSON,
JONNA ELISA STEELE,
JOHNNY WESLEY BOYD SPARKS,
a/k/a "J5,"
IZABELLA MARIE BOLING, a/k/a
"Turbo,"
NICOLE COX,
a/k/a "Nicole Michelle Jenner,"
a/k/a "Nicole Michelle Cox,"
a/k/a "Nicole Patterson,"

Defendants.

Case No. 22-CR-115-JFH

**Government's Response to Defendant Deeter's
Motion for a *Petersen* Hearing (Doc. 117)**

A statement by a co-conspirator of a party during the course and in furtherance of the conspiracy is not hearsay, pursuant to Fed. R. Evid. 801(d)(2)(E) and is admissible at trial. Prior to admitting such testimony, a court must determine that: (1) a conspiracy existed by a preponderance of the evidence; (2) the declarant and defendant were both members of the conspiracy; and (3) the statements were made in the course of and in furtherance of the conspiracy. *United States v. Owens*, 70 F.3d 1118, 1123 (10th Cir. 1995). A court may make these factual determinations by

either holding a *James* hearing¹, *see generally United States v. James*, 590 F.2d 575 (5th Cir. 1979), or provisionally admitting the evidence subject to a party “connecting it up” through later trial testimony or other evidence.

Although a *James* hearing is the preferred method of the two, the Tenth Circuit has held that this is a preference only, and the district court retains discretion to hold a pretrial hearing or permit the government to “connect up” the statements to a conspiracy at trial. *United States v. Urena*, 27 F.3d 1487, 1491 (10th Cir. 1994). In *United States v. McMurray*, the Tenth Circuit held that “*Peterson* does not require a trial judge to hold a preliminary hearing on the admissibility of a co-conspirator’s statements.” 818 F.2d 24, 26 (10th Cir.), cert. denied, 484 U.S. 837 (1987). This is because a “trial court has no obligation to determine the admissibility of possible hearsay at the pretrial stage” *Id.* In either case, the court may consider the statements themselves in determining the establishment of a conspiracy by a preponderance of the evidence. *United States v. Gonzalez-Montoya*, 161 F.3d 643, 6449 (10th Cir. 1998).

There is nothing presented by Deeter that would require a *James* hearing, whereby the court would require the proof of a conspiracy outside the presence of a jury. Requiring the government to lay the proper foundation before admitting the statements, or by connecting them up at a later time, are recognized as appropriate in some instances. This is one of those instances.

¹ Also referred to as a *Petersen* hearing.

The government urges Deeter's motion to be denied. Evidence of the acts and statements of co-conspirators may be admitted prior to demonstrating participation in the conspiratorial scheme by the objecting defendant, providing the foundation is subsequently laid. *United States v. Andrews*, 585 F.2d 961, 966 (10th Cir. 1978); *United States v. Krohn*, 573 F.2d 1382 (10th Cir.), *cert. denied*, 436 U.S. 946 (1978); *Beckwith v. United States*, 367 F.2d 458 (10th Cir. 1966). Once a conspiracy is established, only slight evidence is required to connect the co-conspirator. *Andrews*, 585 F.2d at 966; *United States v. Turner*, 528 F.2d 143 (9th Cir.), *cert. denied*, 423 U.S. 996 (1975).

A separate hearing on the admissibility of co-conspirators' statements would amount to a time-consuming mini trial outside the presence of the jury. The government would be forced to present most of its case-in-chief in order to show the participation of the defendants and the various declarants in an ongoing conspiracy – a presentation that will need to be rehashed before the jury shortly thereafter. Furthermore, such a premature presentation of the government's case will unduly prejudice the government by giving defendants an unjustified preview of its case.

Conclusion

Based on the foregoing, the Motion for a *Petersen* hearing should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2022, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Randy Lynn
Attorney for Richard Dale Deeter, Jr.

Clint James
Attorney for Donald B. Pearson

Richard White
Attorney for Jonna Elise Steele

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Attorney for Johnny Wesley Boyd Sparks

Scott Troy
Attorney for Izabella Marie Boling

Michael Noland
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